IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11450 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANESH PROTIENS THRO'PROP. BABUBHAI TEJABHAI PATEL

Versus

SALES TAX OFFICER-2 DIV.-2

Appearance:

MR MANISH K KAJI for Petitioner No. 1

MR KH KAJI for Petitioner No. 1

MR UR BHATT, AGP. for Respondents No. 1-3

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 27/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The petitioner, a Proprietory concern, in this petition has challenged the provisional assessment dated 20/08/2001, passed under Section 41B of the Sales Tax Act,1969 and consequential orders of attachment and cancellation of registration, praying for the following reliefs :

"(a) this Hon'ble Court be pleased to issue an appropriate writ, direction or order under Article 226 of the Constitution of India quashing and setting aside :

(1) the order of provisional assessment dated 20-8-2001.

(2) the attachment orders dated 25-9-2001 & 22-11-2001.

(3) the order dated 1-11-2001 cancelling registration of the petitioner as a dealer.

(4) the order dated 6-8-2001 demanding security by way of Bank guarantee for Rs.10,00,000/-.

(5) the notice dated 25-10-2001 u/s. 200 of the Code threatening to attach and sell all properties of the petitioner unless the petitioner pays Rs.6,24,685 and permanently restrain the 1st respondent from taking any steps in consequence thereof".

2 In view of the fact that it is common ground between the parties that issues raised in this petition are concluded by decision of this Court in Special Civil Application No.6778 of 2001 rendered on 10/9/2001 in the case of Krunal Oil Marketing Ltd. vs. Sales Tax Officer, it is not necessary to setout the facts and submissions of parties in detail.

3 In view of the clear stand taken by the State Government as reproduced in the decision in case of Krunal Oil Marketing Ltd.(Supra), and as reiterated by Mr.U.R.Bhatt, learned Assistant Government Pleader appearing for the respondents in this petition, it is

clear that in case the transactions are found to be genuine they will not be affected by Section 30AA and Proviso thereto. In the earlier decision it is stated thus :

> "8. In this view of the matter, the respondents are required to reexamine the case in light of the principles laid down by the Apex Court in State of Maharashtra vs. Suresh Trading Co. (supra) and in light of the aforesaid statement which was recorded by this Court in Giriraj Sales Corporation vs. State of Gujarat (supra). The assessment orders will have to be quashed and set aside and respondent No.1 will have to be directed to take a fresh decision in accordance with law and particularly in light of the aforesaid principles laid down by the Apex Court in State of Maharashtra vs. Suresh Trading Co. 109 STC 439 and in light of the stand of the State Government as recorded in Giriraj Sales Corporation vs. State of Gujarat (Special Civil Application No.2648 of 1996 decided on 18-12-1998)".

4 The petition is accordingly allowed and the provisional assessment dated 20/08/2001 is hereby quashed and set aside. As a consequence the attachment orders dated 25/12/2001 and 22/11/2001 as well as the order dated 1/11/2001 cancelling the registration of the petitioner and the order dated 6/8/2001 demanding security by way of bank guarantee for Rs.10,00,000/- in the notice dated 25/10/2001 under Section 200 of the Code to attach and sell the properties of the petitioner are also quashed and set aside with the same directions as in paragraph 8 above. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

Sd/- Sd/-
(B.C.Patel,J) (D.A.Mehta,J)

m.m.bhatt